

STATE OF NEW MEXICO CONTINUING PLANNING PROCESS

Adopted in fulfillment of the
requirements of Section 303(e) of
the Federal Clean Water Act

NEW MEXICO WATER QUALITY CONTROL COMMISSION

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PART 1.
PURPOSE AND BACKGROUND

PURPOSE

The continuing planning process for waters of the United States described in Part 2 is adopted by the New Mexico Water Quality Control Commission in fulfillment of the requirements of Section 303(e) of the federal Clean Water Act. This continuing planning process supersedes that described in the previous State of New Mexico Continuing Planning Process for Water Quality Management. The previous continuing planning process was adopted by the Water Quality Control Commission in January 1987 and subsequently approved by the U.S. Environmental Protection Agency.

This continuing planning process does not apply to any waters under the jurisdiction of Indian Tribes pursuant to Section 518 of the Clean Water Act.

LEGAL REQUIREMENTS

Section 303(e) of the federal Clean Water Act requires that each state establish and maintain a continuing planning process. Each state is responsible for managing its water quality program to implement the processes described in the continuing planning process. The U.S. Environmental Protection Agency (EPA) is responsible for reviewing each state's continuing planning process periodically in order to ensure that it is consistent with the Clean Water Act. EPA must approve any continuing planning process for navigable waters that meets the requirements set forth in Section 303(e)(3)(A)-(H) of the Act. Under the Clean Water Act "navigable waters" are waters of the United States (Section 502(7)). Waters of the United States are defined in 40 CFR 122.2.

The required contents for the continuing planning process are also described in federal regulations for water quality planning and management (40 CFR 130.5(b)(1)-(9)). The contents must include the following:

- (1) The process for developing effluent limitations and schedules for compliance at least as stringent as those required by Sections 301 (b)(1), 301 (b)(2), 306 and 307 of the federal Clean Water Act and at least as stringent as any requirements contained in applicable water quality standards adopted pursuant to Section 303 of the Act.
- (2) The process for incorporating elements of any applicable areawide water quality management plans prepared pursuant to Section 208 of the Act, and applicable basin plans under Section 209 of the Act.
- (3) The process for developing total maximum daily loads (TMDLs) and individual water quality based effluent limitations for pollutants in accordance with Section 303(d) of the Act and 40 CFR 130.7(a).
- (4) The process for updating and maintaining the state water quality management plan, including schedules for revision.
- (5) The process for assuring adequate authority for intergovernmental cooperation in the implementation of the state water quality management program.

- (6) The process for establishing and assuring adequate implementation of new or revised water quality standards under Section 303(c) of the Act.
- (7) The process for assuring adequate controls over the disposition of residual waste from water treatment processing.
- (8) The process for developing the inventory and ranking in order of priority of needs for construction of waste treatment facilities to meet applicable requirements of Section 301 and 302 of the Act.
- (9) The process for determining the priority of permit issuance.

Two of the required contents listed above, (2) and (9), do not apply to the State of New Mexico and are not included in the continuing planning process set forth in Part 2. With regard to (2), New Mexico has chosen to do its water quality management planning on a statewide basis and therefore has no areawide water quality management plans or basin water quality management plans.

With regard to (9), permitting of discharges to surface waters in New Mexico is through the National Pollutant Discharge Elimination System (NPDES). NPDES permits for New Mexico are issued by EPA Region 6 in Dallas, Texas, and EPA determines the priority of permit issuance. In order to comply with Section 303(e)(2) of the Clean Water Act, New Mexico would have to include the process for determining the priority of permit issuance in its continuing planning process before the state could assume delegation of the NPDES permit program and thus implement the program at the state level.

WATER QUALITY MANAGEMENT IN NEW MEXICO

The basic authority for water quality management in New Mexico is provided through the New Mexico Water Quality Act, NMSA 1978, Sections 74-6-1 to 74-6-17 (1997). This statute establishes the New Mexico Water Quality Control Commission and specifies its duties and powers. The Commission's duties and powers are specified in Section 74-6-4 of the Water Quality Act and include the following:

- * the administration of loans and grants from the federal government and from other sources, public or private;
- * the adoption of a comprehensive water quality management program;
- * the development of a continuing planning process;
- * The adoption of water quality standards for surface and ground waters of the state;
- * the adoption and promulgation of regulations to prevent or abate water pollution in the state or in any specific geographic area, aquifer or watershed of the state or in any part thereof, or for any class of waters;
- * the adoption of regulations governing the disposal of septage and sludge and the use of sludge for beneficial purposes;
- * the delegation of administration of the Commission's regulations to constituent agencies so as to assure adequate coverage and prevent duplication of effort;
- * the authority to enter into or authorize constituent agencies to enter into agreements with the federal government or other state governments for purposes consistent with the Water Quality Act; and
- * the authority to grant an individual variance from any regulation of the Commission whenever the Commission finds after a public hearing that compliance with the regulation will impose an unreasonable burden upon any lawful business, occupation or activity. The Commission may only grant a variance conditioned upon a person effecting a particular abatement of water pollution within a reasonable period of time.

The Water Quality Control Commission is the state water pollution control agency for all purposes of the federal Clean Water Act and may take all action necessary and appropriate to secure the benefits of the Act to this state, its political subdivisions or interstate agencies. The Commission is composed of eight state agency heads and three representatives of the public as follows:

1. the secretary of environment or a member of his staff designated by him;
2. the director of the department of game and fish or a member of his staff designated by him;
3. the state engineer or a member of his staff designated by him;
4. the chairman of the oil conservation commission or a member of his staff designated by him;
5. the director of the state parks division of the energy, minerals and natural resources department or a member of his staff designated by him;
6. the director of the New Mexico department of agriculture or a member of his staff designated by him;
7. the chairman of the soil and water conservation commission or a soil and water conservation district supervisor designated by him;
8. the director of the bureau of mines and mineral resources at the New Mexico institute of mining and technology or a member of his staff designated by him; and
9. three representatives of the public to be appointed by the governor for terms of four years.

As the Water Quality Control Commission has no staff of its own, responsibilities for water quality management are delegated to constituent agencies. The Commission has divided responsibility for administering Commission regulations for discharges to surface water and to ground water between the New Mexico Environment Department (NMED) and the Oil Conservation Division of the Energy, Minerals and Natural Resources Department according to the type of facility or discharge. In addition to both these agencies, the Game and Fish Department and the State Parks Division of the Energy, Minerals and Natural Resources Department have also been delegated authority to enforce the Commission regulation on disposal of refuse in a watercourse. This is in accordance with the NM Water Quality Act, Sections 74-6-8 through 74-6-11.

NMED is responsible for development of most elements of the Statewide Water Quality Management Plan. Other local, state and federal agencies and other governmental and non-governmental entities, including watershed planning groups, may take responsibility for implementation of particular elements in the plan as described in the Statewide Water Quality Management Plan and in the State of New Mexico Nonpoint Source Management Program.

Among the other responsibilities delegated or assigned to NMED are the following:

- * administration of the utility operators certification regulations;
- * state certification that NPDES permits meet applicable requirements of the federal Clean Water Act and state law, regulations, and water quality standards;
- * state certification of other federal water pollution control permits, including dredge-and-fill permits issued pursuant to Section 404 of the federal Clean Water Act as well as hydropower licenses issued by the Federal Energy Regulatory Commission;
- * investigation of existing water quality;
- * determination of the causes and extent of water pollution;
- * administration of the state-and-federally funded wastewater construction loans program; and
- * development of a ranking system and ranking in order of priority of needs of projects eligible for funding under the wastewater construction loans program.

Other parts of state government also have responsibilities under other Acts which impact water quality. These include but are not limited to the State Engineer Office under laws governing the allocation and use of the waters of the state; the Oil Conservation Division under the Oil and Gas Act; the Mining and Minerals Division under the New Mexico Mining Act and the Coal Surface Mining Act; the Soil and Water Conservation Districts under the Soil and Water Conservation District Act; and the Department of Agriculture under the Pesticide Control Act. Coordination among the various programs is through the Water Quality Control Commission of which eight subdivisions of state government are constituent agencies, through memoranda of understanding, and through communications between the various departments.

PART 2.

**CONTINUING PLANNING PROCESS
FOR WATERS OF THE UNITED STATES**

INTRODUCTION

The seven elements of the required contents for the continuing planning process applicable to the State of New Mexico are described in this part. In order to keep the length of the part to manageable proportions, documents are incorporated by reference where applicable. The documents incorporated by reference may later be revised, after public notification and public participation appropriate to each document. Such revised documents are considered to be incorporated herein by reference. Documents requiring approval by the U. S. Environmental Protection Agency (EPA) are considered incorporated after EPA approval of the revised document. This procedure is in accordance with current EPA guidance on the continuing planning process.

PROCESS FOR DEVELOPMENT OF EFFLUENT LIMITATIONS

The Water Quality Control Commission has determined that the National Pollutant Discharge Elimination System (NPDES) permit program established under Section 402 of the federal Clean Water Act should be the primary mechanism for controlling point source discharges to surface waters in New Mexico. EPA Region 6 in Dallas, Texas is responsible for issuing the permits and enforcing effluent limitations in the permit, which specify the amount and concentrations of contaminants that a permittee may discharge to a surface watercourse.

The Water Quality Act Section 74-6-4.E assigns to the New Mexico Environment Department (NMED) authority to perform state certification of NPDES permits pursuant to Section 401 of the federal Clean Water Act. In state certification, NMED certifies that a NPDES permit meets applicable requirements of the federal Clean Water Act and state law, regulations, and water quality standards. If NMED certifies that additional or more stringent effluent limitations are necessary EPA is obligated to incorporate them into the NPDES permit.

Effluent limitations for many dischargers are found in the Statewide Water Quality Management Plan. Effluent limitations were previously found in the individual water quality basin plans. However, New Mexico's eleven water quality basin plans adopted in the 1970s were superseded in 1987 by the Statewide Water Quality Management Plan.

It is the policy of the Water Quality Control Commission that appropriate effluent limitations for publicly owned wastewater treatment plants and non-municipal facilities are secondary treatment (defined in 40 CFR 133.102) and applicable best available technology (BAT) (separate guidelines for each industry found in 40 CFR Subpart N - Effluent Guidelines and Standards) requirements, respectively, and any additional requirements imposed in the Statewide Water Quality Management Plan or imposed to meet water quality standards.

The process used by NMED for determining appropriate effluent limitations is found in the implementation plan incorporated into Section 1101 of the **State of New Mexico Standards for Interstate and Intrastate Streams**, 20 NMAC 6.1.1101 (Reference 1). NMED also uses **Region 6 Implementation Guidance for State of New Mexico Standards for Interstate and Intrastate Streams**, (Reference 2) as guidance in the evaluation of NPDES permits. In the future, NMED may develop its own implementation guidance, but until such guidance is developed, NMED will continue to use the Region 6 guidance.

The subsection on **Toxic Substances** in the **General Standards** section of the **State of New Mexico Standards for Interstate and Intrastate Streams** (20 NMAC 6.1 Subpart 1) sets forth guidelines for determining appropriate effluent limitations for these

substances (Reference 1). Like other general standards, these toxic substances standards apply at all times, unless a specified standard is provided elsewhere, to all surface waters of the State. In those cases where effluent limitations more stringent than secondary treatment or BAT requirements are needed to maintain water quality standards, NMED uses the Total Maximum Daily Load (TMDL) process set forth in 40 CFR 130.7 and develops a point source load allocation for the discharge (see section on **Process for Development of Total Maximum Daily Loads and Individual Water Quality Based Effluent Limitations** below). Point source load allocations are incorporated into the Statewide Water Quality Management Plan in accordance with procedures set forth below in **Process for Updating and Maintaining the State Water Quality Management Plan**. Pursuant to 40 CFR 130.12 and 122.4(d), NPDES permits must be consistent with the Statewide Water Quality Management Plan.

The subsection on **Compliance Schedules** in the **Compliance with Water Quality Standards** section of the **State of New Mexico Standards for Interstate and Intrastate Streams** (Reference 1) allows the inclusion of compliance schedules in NPDES permits issued to existing facilities in order to provide sufficient time to comply with permit limits based upon new or revised provisions of those standards. Compliance schedules will be established by EPA in a manner consistent with other schedules across Region 6. Compliance schedules will specify milestone dates and will include provisions for submitting progress reports and a final report detailing activities conducted toward meeting compliance schedule provisions.

PROCESS FOR THE DEVELOPMENT OF TOTAL MAXIMUM DAILY LOADS AND INDIVIDUAL WATER QUALITY BASED EFFLUENT LIMITATIONS

The total maximum daily load (TMDL) of a pollutant is the greatest loading or amount of the pollutant that may be introduced into a stream reach from all sources without resulting in a violation of water quality standards. The TMDL consists of the sum of load allocations (LA), which are the pollutant loads contributed by nonpoint sources of pollution and natural background sources, and point source load allocations or wasteload allocations (WLA), which are those portions of the total loading set aside for contributions of the pollutant from point source discharges (40 CFR 130.2(e)-(i)), and a margin of safety (MOS) required by the Clean Water Act Section 303(d)(1)(C).

Pursuant to Section 303(d) of the federal Clean Water Act, total maximum daily loads must be developed for water quality limited segments. Water quality limited segments are those segments where water quality does not meet or is not expected to meet applicable water quality standards even after point source discharges achieve the effluent limitations required by Sections 301 and 306 of the federal Clean Water Act (40 CFR 130.20)). TMDLs are to be done on a pollutant by pollutant basis taking into account seasonal variability. Identification of a segment by a state as water quality limited and still requiring TMDLs means that the state is to:

- * calculate a total maximum daily load (TMDL) for the segment;
- * develop more stringent effluent limitations and wasteload allocations (WLAs), if necessary, for point sources on the segment;
- * identify nonpoint sources of pollution and if possible quantify and assign load allocations (LAs) to them; and
- * identify Best Management Practices, where appropriate, to mitigate nonpoint source pollution.

The New Mexico Environment Department (NMED) is responsible for determining whether stream segments are water quality limited. The water quality limited segments identified are compiled into a list as required by Section 303(d) of the Clean Water Act and 40 CFR 130.7. These 303(d) lists are due to EPA on April first of each even numbered year. Public notice is issued and there is opportunity for public comment on proposed lists. Criteria used are described in the documents **Process for Developing Total Maximum Daily Loads for Point Source Wasteload Allocations, Nonpoint Source Load Allocations With the Methodology for Stream Reach Ranking in the State of New Mexico, pages 1-14** (Reference 3); and **State of New Mexico Procedures for Assessing Standards Attainment for 303(d) List and 305(b) Report, Assessment Protocol** (Reference 4).

Under Section 1201 of the Water Quality Control Commission Regulations, 20 NMAC 6.2.1201, any person intending to make a new water contaminant discharge or to alter the character or location of an existing water contaminant discharge must file a notice of intent to discharge with NMED. NMED then reviews the information provided using the implementation plan contained in the state water quality standards (Reference 1, Section 1101). On the basis of this review, NMED determines whether the stream segment affected is water quality limited and hence requires TMDLs. NMED also collects data from the following sources:

- * the most recent New Mexico Report to Congress under Section 305(b) of the Federal Clean Water Act;
- * dilution calculations and predictive models for waters not meeting applicable water quality standards;
- * federal, state and local agencies/municipalities;
- * members of the public and academic institutions;
- * intensive water quality surveys conducted by the NMED Standards and Surveillance Section;
- * waters identified in Nonpoint Source 319 assessment; and
- * any and all other entities that come forth with valid scientific information on New Mexico's water quality.

This water quality data is compiled, screened for scientific validity and incorporated into the process for determining water quality limited segments and into the TMDL process.

Ranking of water quality limited reaches requiring development of TMDLs is accomplished on the basis of a ranking system developed by NMED and explained in Reference 3 cited above. This system takes into account the severity of the pollution, the uses to be made of the waters, the location of the waterbody, and the presence or absence of threatened or endangered species or of acute public health concerns, and includes a factor for uncertainty due to data limitations. NMED revisits the Priority Ranking System from time to time to determine the need for revision. Whenever revision is proposed there will be public notice and opportunity for public comment. Any subsequent revisions are considered incorporated herein by reference.

The procedures by which the state utilizes the total maximum daily load process to improve water quality are described in the document referenced above (Reference 3). All sampling and analysis methodologies must conform to the requirements of the **Sampling and Analysis and Compliance with Water Quality Standards** sections of the **State of**

New Mexico Standards for Interstate and Intrastate Streams, 20 NMAC 6.1 (Reference 1). They must also comply with EPA approved Quality Assurance Project Plans (QAPPs). QAPPs can vary depending on the type of waterbody and pollutants of concern. As TMDLs are developed by NMED, the following items will be described in the TMDL document: the segment of river/stream/lake, the type of monitoring, data collection and analysis, the type of model used (if a model is needed), statistical techniques, the rationale behind the margin of safety, and all other aspects of the TMDL process.

The results of the determination of a TMDL and corresponding point source load allocations are incorporated into the water quality management plan as specific effluent limitations for the point source discharge under Work Elements 5 and 6. Procedures for updating the plan are described below under the section **Process for Updating and Maintaining the Statewide Water Quality Management Plan**. Pursuant to 40 CFR 130.12(a), NPDES permits must be consistent with the Statewide Water Quality Management Plan.

PROCESS FOR UPDATING AND MAINTAINING THE STATEWIDE WATER QUALITY MANAGEMENT PLAN

The Statewide Water Quality Management Plan sets forth directions for further study of water pollution, options to be considered in the development of water pollution control mechanisms, and, most importantly, strategies to be implemented by state, local, and federal agencies to maintain and improve water quality in New Mexico. The plan consists of the initial plan completed by the state in 1979 and subsequent updates of the plan.

The Water Quality Control Commission adopts the plan under the statutory authority of the New Mexico Water Quality Act. See NMSA 1978, 74-6-4(B). The Commission has delegated responsibility for development of most elements of the plan to the New Mexico Environment Department (NMED). Other local, state and federal agencies and other governmental and non-governmental entities, including watershed planning groups, may take responsibility for implementation of particular elements in the Statewide Water Quality Management Plan as described in the plan and in the State of New Mexico Nonpoint Source Management Program.

Water Quality Management Plan Updates: To ensure that the plan continues to provide an effective framework for water quality management, updates and new work elements are developed as needed and work elements no longer required may be deleted. Updates may be needed to reflect population growth, economic development, changing water quality conditions, results of implementation activities, new and revised effluent limitations, and new requirements, including new laws and regulations.

Consistency with Federal Programs: The federal regulatory definition of a water quality management plan given in 40 CFR 130.2(k) includes both the Statewide Water Quality Management Plan and the state's water quality basin plans. However, New Mexico's eleven water quality basin plans adopted by the Commission during the 1970s were superseded in 1987 by the Statewide Water Quality Management Plan. EPA uses the Statewide Water Quality Management Plan to insure consistency between programs.

- * EPA may not issue an NPDES permit which is in conflict with an approved water quality management plan (40 CFR 130.12(a)). The federal Clean Water Act requires minimum treatment levels of secondary treatment for publicly owned

treatment plants and best available technology (BAT) for non-municipal discharges and allows states to impose more stringent or additional requirements on the basis of state law, regulations, and water quality standards. EPA uses the effluent limitations set forth in the Statewide Water Quality Management Plan as a basis for compliance with the consistency requirement along with any additional or more stringent requirements prescribed in Work Element 5, Total Maximum Daily Loads or in Work Element 6, Point Source Load Allocations, in the plan.

- * The state must review wastewater treatment facility plans developed under the federal construction loans program for consistency with the Statewide Water Quality Management Plan. Construction loans funds may be awarded only to wastewater management agencies designated in the plan (40 CFR 130.12(b)).

Public Participation: Because the water quality management plan plays an important role in guiding the state's water pollution control programs, changes in the plan require open processes of government and efforts to promote public awareness and input.

Public participation activities for updates to work elements of the Statewide Water Quality Management Plan fall into several categories:

* **Administrative Updates**

Updates to planning area boundaries under Work Element 1, population projections under Work Element 3 and the effluent limitations inventory under Work Element 6 are administrative tools necessary to meet the consistency requirements discussed above.

Parties interested in the planning area boundary for a wastewater facility can be so specifically identified that the parties can be contacted directly to request input and public notice is not needed. In accordance with the procedure established by Work Element I of the Statewide Water Quality Management Plan, the final planning area is established by NMED after consideration of input from interested parties.

Population projections under Work Element 3 are developed by the Bureau of Business and Economic Research at the University of New Mexico based on the most recent census.

The effluent limitations inventory under Work Element 6 lists effluent limitations certified by NMED for the state's NPDES permits and other information pertinent to the permits. No public participation is associated with the establishment or updating of this inventory, because EPA provided the public with an opportunity to request a public hearing on individual NPDES permits when the draft permits were issued.

For these administrative updates, placement of a proposed update on the agenda of a Water Quality Control Commission meeting constitutes adequate public

notification. Like other parts of the Statewide Water Quality Management Plan, these administrative updates must be approved by the Water Quality Control Commission at an open public meeting.

For administrative flexibility, parts of several work elements (including maps of wastewater management planning area boundaries under Work Element 1, wastewater management planning area population projections under Work Element 3, and the effluent limitations inventory under Work Element 6) are contained in the water quality management plan appendix. Appendix materials do not have to be certified by the Governor or approved by EPA. All other updates are contained in the plan itself.

*** Updates That Require Formal Public Notice and May Require a Public Hearing**

Updates that may or may not affect substantial numbers of people or generate significant public interest include the following: updates to the Introduction to the Statewide Water Quality Management Plan; updates to Work Element 2, Assessment of Stream Segment Classifications; Work Element 5, Total Maximum Daily Loads; the point source load allocation portion of Work Element 6; Work Element 11, Public Participation Program; Work Element 13, Designation of Management Agencies; Work Element 14, Implementation Schedules; and any other non-administrative work elements proposed for update or deletion, or new non-administrative work elements proposed for addition. During development of a proposed update, NMED (alone or in conjunction with other entities) may provide information, solicit comments, or hold informal public meetings in the geographic area likely to be impacted or other appropriate area. Where appropriate, a proposed update may be submitted to EPA in draft form for technical review before presentation to the Water Quality Control Commission.

The formal schedule for adoption, certification, and approval of plan updates begins with the presentation of the proposed update to the Commission. The proposed update is put on the agenda of a Water Quality Control Commission meeting and formal public notice of it, including notice to EPA, is issued. There shall be at least thirty days allowed for the public to comment and to request a public hearing before the Commission acts on a proposed update.

The Commission shall hold a formal public hearing if there are written requests for a hearing and the Commission determines that there is significant public interest. The time, date and place of the hearing and any prehearing schedule shall be determined by the Commission and notice shall be issued at least 45 days before the hearing.

The Commission may issue such orders specifying procedures for the conduct of the hearing as may be necessary and appropriate to fully inform the Commission of the matters at issue in the hearing or control the conduct of the hearing. Such orders may include requirements for giving additional public notice, holding

prehearing conferences, filing direct testimony in writing prior to the hearing, or limiting testimony and cross-examination.

At the hearing the Commission shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. The Commission may designate a hearing officer to take evidence in the hearing. The Commission shall make an audio recording of the hearing. If a person other than a Commissioner requests a written transcript or certified copy of the audio recording, the requestor shall pay the cost of the transcription or audio copying.

*** Inactive Work Elements and Work Elements Now Covered by Other Programs**

Work Elements which are inactive work areas under the Statewide Water Quality Management Plan include the following: Work Element 4, Nonpoint Sources; Work Element 7, Municipal Waste Treatment Systems Needs; Work Element 8, Industrial Waste Treatment System Needs; Work Element 9, Ground Water Control Needs; and Work Element 10, Urban Stormwater Runoff. There is no Work Element 12. Some of these work elements are being actively pursued under the New Mexico Nonpoint Source Management Program or under other programs, and on some others no future work is anticipated at this time. Other work elements may become inactive in the future. All work elements, whether active or inactive, remain part of the Statewide Water Quality Management Plan until formally removed by an update. 40 CFR 130.6 allows referencing of other documents, such as the Nonpoint Source Management Program, instead of including all details in the Statewide Water Quality Management Plan. Such referencing would be done by an update of the Statewide Water Quality Management Plan. The list of work elements under the plan can be adjusted to take account of inactive work elements or those now covered by other programs after public notice and opportunity for public hearing, as described above in the subsection on **Updates That Require Formal Public Notice and May Require a Public Hearing**.

Adoption and Approval of Updates: After appropriate public participation as described above, plan updates are adopted by the Water Quality Control Commission. The Governor or his or her designee then certifies by letter to the regional administrator of the U.S. Environmental Protection Agency, Region 6, that the update is consistent with all other parts of the plan, and the update is submitted to EPA for approval. Finally, the update is approved by EPA.

PROCESS FOR ASSURING INTERGOVERNMENTAL COOPERATION IN THE IMPLEMENTATION OF THE STATEWIDE WATER QUALITY MANAGEMENT PROGRAM

Intergovernmental cooperation in the implementation of the Statewide Water Quality Management Program is provided by five factors: (1) the composition of the Water Quality Control Commission, (2) the delegation of responsibilities to constituent agencies by the Commission, (3) the authority of the Commission to enter into or to authorize its constituent agencies to enter into agreements with federal or state agencies for purposes consistent with the New Mexico Water Quality Act, (4) the designation of management agencies to carry out specific responsibilities under the Statewide Water Quality Management Plan, and (5) the review of all grant applications and amendments through the New Mexico Department of Finance and Administration's "Clearinghouse System".

Eight of the eleven members of the New Mexico Water Quality Control Commission are representatives of state agencies involved in some aspect of water quality management, and the other three members are representatives of the public appointed by the Governor. Thus, the Commission itself serves as a forum for exchange of information, coordination, and cooperation.

The Water Quality Control Commission assures that its programs and responsibilities are carried out and coordinated with adequate coverage but without duplication of effort through delegation of responsibilities to constituent agencies. The Commission reviews and adopts such delegations at its regular open meetings and the specific delegation of responsibility becomes part of the permanent record of Commission actions. Commission delegations are summarized in Part 1.

The authority of the Water Quality Control Commission to enter into or to authorize its constituent agencies to enter into agreements with other agencies provides the Commission with a means of formally coordinating with agencies outside of the Commission. This mechanism also allows the Commission to use the expertise of other agencies in fulfilling its responsibilities.

The Water Quality Control Commission also assures coordination in implementing the Statewide Water Quality Management Plan by designating management agencies to carry out specific responsibilities. Management agencies must satisfy the requirements of 40 CFR 130.6(c)(5).

Specifically, management agencies must have the legal, institutional, managerial, and financial capability and programmatic activities to carry out the designated responsibilities. The designation must also provide for intergovernmental cooperation between the designated agency and the Commission. Management agencies must formally accept the designated responsibilities. After the Commission has formally

adopted a management agency designation, it is certified by the Governor. These designations are addressed in Work Element 13 of the Statewide Water Quality Management Plan.

PROCESS FOR ESTABLISHING AND ASSURING IMPLEMENTATION OF WATER QUALITY STANDARDS

Under the New Mexico Water Quality Act, the New Mexico Water Quality Control Commission adopts water quality standards for surface and ground waters of the State. As required by Section 303(c) of the federal Clean Water Act, the Commission reviews its surface water quality standards (Reference 1) at least once every three years. The New Mexico Environment Department (NMED) is responsible for conducting the triennial standards review; however, others, including the general public, are allowed to propose new or revised water quality standards to the Commission at any time under the New Mexico Water Quality Act.

Adoption of new or revised surface water quality standards is done in conformance with requirements in the federal Clean Water Act, federal regulations, and the New Mexico Water Quality Act. Testimony presented at a public hearing will be the basis for Commission decisions to establish any water quality standard or to allow degradation of any surface water to accommodate important economic and social development pursuant to the antidegradation policy in the standards. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control. Public notice of the hearing is published in at least one newspaper of general circulation and in the New Mexico Register and is sent to the Commission mailing list. Upon request, proposed amendments are made available to the public in advance of the hearing. All interested agencies and individuals are permitted to present testimony at the hearing and to cross-examine witnesses.

New or revised water quality standards adopted by the Commission are filed with the State Records Center. Pursuant to the provisions of the State Rules Act, the standards become effective 30 days after filing.

In addition, new or revised surface water standards adopted by the Commission are certified by the state attorney general as being duly adopted pursuant to state laws and then submitted to the U.S. Environmental Protection Agency (EPA), Region 6 in Dallas, Texas for review and approval. EPA must notify New Mexico of its approval within 60 days or its disapproval within 90 days. A federally disapproved surface water standard remains in effect, even though disapproved by EPA, until the state revises the standard to bring it into conformance with the federal Clean Water Act and water quality standards and regulations promulgated pursuant to the Act, or until EPA promulgates a surface water quality standard to supersede the disapproved state standard.

Implementation of new or revised surface water quality standards is through controls on point source pollutant discharges (see **Development of Effluent Limitations** section above) and through best management practices applied to nonpoint sources of pollution. The Clean Water Act makes no distinction in its goals between point source and nonpoint source discharges. The federal Clean Water Act, Section 101(a)(7) states: "It is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution." The process for implementing water quality standards is described in the implementation plan in the state surface water standards, Section 1101 (Reference 1). Water quality standards are enforceable pursuant to the NM Water Quality Act through administrative penalties under Section 74-6-10 or through civil actions under Section 74-6-10.1(B), whether violations of standards are caused by point or nonpoint sources.

Processes used by the state to assure that surface water quality standards will be met differ depending on whether or not the receiving water body is water quality limited. A water quality limited segment is any water body segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations in NPDES permits required by section 301(b) and 306 of the Clean Water Act. The judgment on whether a water body segment is water quality limited is made contaminant by contaminant; a segment could be water quality limited for some contaminants but not for others. In any case, whether or not a segment is water quality limited, the State's antidegradation policy requirements described below must be met.

Evaluation of Water Body Segments

Data on the quality of surface waters of the State that has been gathered over a period of years by the NMED, the US Geological Survey, and other entities (see **Process for the Development of Total Maximum Daily Loads and Individual Water Quality Based Effluent Limitations** section above) is analyzed by NMED. If necessary, additional data are obtained through water quality surveys. On the basis of available data, NMED identifies those surface water segments not meeting water quality standards. These waters are identified in reports issued by NMED and in the biennial water quality report prepared by NMED and approved by the Water Quality Control Commission pursuant to section 305(b) of the federal Clean Water Act. A list of water quality limited segments is prepared and submitted to EPA for approval pursuant to Section 303(d) of the Clean Water Act.

Water Body Segments Not Water Quality Limited

If a water body segment already meets and is expected to continue meeting standards, and thus is not water quality limited, the implementation of standards is relatively straightforward. Every point source application for a new or revised NPDES permit will be evaluated, permit limitations set, and State certification provided by NMED in accordance with **Region 6 Implementation Guidance for State of New Mexico Standards for Interstate and Intrastate Streams** (Reference 2) and with the State antidegradation policy. Any existing nonpoint sources are already being adequately controlled through existing voluntary best management practices (BMPs), since water quality standards are being met. Organizations or individuals planning new nonpoint sources can obtain information and apply for assistance from NMED, Soil and Water Conservation Districts and other entities to enable them to adopt effective BMPs so that standards, including the antidegradation policy, will continue to be met.

Water Quality Limited Segments

Total Maximum Daily Loads (TMDLs): TMDLs are to be developed for water quality limited segments where effluent limitations or other pollution control requirements are not stringent enough to implement applicable water quality standards. TMDLs are the sum of the wasteload allocations (WLAs) contributed by point sources, plus the load allocations (LAs) contributed by nonpoint sources of pollution and natural background sources, plus a margin of safety. These loads must be established at a level necessary to implement the applicable water quality standards as required by the Clean Water Act Section 303(d)(1).

The State of New Mexico has developed TMDLs for some water quality limited segments. The document **The Process for Developing Total Maximum Daily Loads for Point Source Wasteload Allocations and Nonpoint Source Load Allocations with the Methodology for Stream Reach Ranking in the State of New Mexico** (Reference 3) was developed by NMED to carry out this process. The April 1997 Consent Decree in the case of Forest Guardians and Southwest Environmental Center v. Carol Browner, Administrator, U.S. Environmental Protection Agency (US District Court for the District of New Mexico CIV. NO. 96-0826 LH), and the subsequent Memorandum of Understanding (MOU) between EPA Region 6 and NMED resulted in a twenty year watershed schedule which is superimposed upon the Stream Reach Ranking System. These two 1997 documents, the Consent Decree and the MOU, spell out the schedule by which TMDLs in New Mexico are to be promulgated.

Point Sources: Each NPDES permit issued must contain requirements necessary to achieve water quality standards (40 CFR 122.4(d)). Where a WLA has been assigned through the TMDL process, the WLA will be incorporated in the permit. Where a WLA has not been developed, NMED (along with EPA) will review effluent discharge data to ensure that NPDES permits are protective of water quality standards. In reviewing such data, NMED will use recognized assessment protocols and other documentation to establish effluent limits when certifying NPDES permits. Documentation includes **Region 6 Implementation Guidance for State of New Mexico Standards for Interstate and**

Intrastate Streams (Reference 2) and the NM antidegradation policy found in the surface water quality standards.

Nonpoint Sources: The federal Clean Water Act states as the national policy that the goals of this Act are to be met through the control of both point and nonpoint sources of pollution. Further, the Code of Federal Regulations (CFR) 40 CFR 130.6(c)(4) provides that as part of its Water Quality Management Plan each State shall describe the regulatory and non-regulatory programs, activities and Best Management Practices (BMPs) which the agency has selected as the means to control nonpoint source pollution where necessary to protect or achieve approved water uses. The antidegradation policy calls for all cost-effective and reasonable BMPs for nonpoint source control. Neither the Act nor the CFR specify how nonpoint sources are to be controlled; that is left up to each State. But it is clear that under the Clean Water Act nonpoint sources must not be allowed to cause surface water standards to be violated. To deal with nonpoint sources of pollution New Mexico has chosen a voluntary BMP program which has proved to be successful where appropriately applied. Many agencies and organizations in New Mexico participate in promoting the control of nonpoint source pollution, reflecting the widespread desire that the voluntary program prove adequate to fully protect stream standards and existing and designated uses statewide and meet the antidegradation policy.

The New Mexico Nonpoint Source Management Program (NPSMP) describes the activities and resources devoted to the control of nonpoint source pollution. The NPSMP does not differentiate in application on the basis of whether or not load allocations (LAs) for nonpoint sources have been developed through the TMDL process for a particular stream reach under consideration. NMED is the lead agency for the NPSMP, and the nonpoint source interagency task force and other governmental and non-governmental entities actively participate in the program, as described in the NPSMP.

In New Mexico the primary sources of surface water nonpoint source pollution are erosion from rangelands, construction, silviculture, resource extraction, land disposal, roads, and recreation. The goal of the NPSMP is to develop and implement a program which will reduce, to the extent feasible, man-induced pollutants from nonpoint sources. Achievement of this goal is defined as attainment of surface water quality that will fully protect designated uses described in the State's surface water quality standards and meet the goals of the federal Clean Water Act. Nonpoint source controls are typically established through implementation of BMPs which can be either structural or nonstructural in nature.

Many of the stream segments which have been or are water quality limited due to nonpoint source pollution pass through public lands. NMED in 1990 signed a Management Agency Agreement with the U.S. Forest Service, Southwestern Region, and in 1992 signed a Memorandum of Understanding with the U.S. Bureau of Land Management (BLM), both for the purpose of achieving the water quality objectives of the federal Clean Water Act. Under each of these documents the federal agency involved agreed to ensure that all new and renewed land use authorizations, easements, rights-of-way documents, allotment management plans, term-grazing permits, and other

agreements involving permitted activities on properties administered by the federal agency would have enforceable provisions for compliance with water quality standards. Efforts under these agreements have resulted, and are expected to continue to result, in the implementation of BMPs and mitigation measures at many sites.

Road construction and maintenance (or lack thereof) has been a major source of nonpoint source pollution throughout the State. In 1994 NMED signed a Memorandum of Understanding with the NM State Highway and Transportation Department which has resulted, and is expected to continue to result, in an expanded program of sound BMP implementation at road construction and maintenance sites.

Antidegradation Policy

The Code of Federal Regulations, 40 CFR 131.12, states:

The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

- (1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.*
- (2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.*
- (3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.*

- (4) *In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementation method shall be consistent with section 316 of the Act. (The Act referred to is the federal Clean Water Act.)*

The State of New Mexico has incorporated its antidegradation policy, which is based on these EPA requirements, into its surface water quality standards (Reference 1). See 20 NMAC 6. 1.1101.A. The antidegradation policy is reviewed by the Water Quality Control Commission every three years during the triennial review of the standards. All of the antidegradation categories or tiers are implemented using the steps described earlier in this section.

PROCESS FOR CONTROLLING DISPOSITION OF RESIDUAL WASTE FROM WASTEWATER TREATMENT PROCESSING

New Mexico recognizes the importance of proper sewage sludge management to prevent ground and surface water pollution. The state accordingly allows three methods for the disposal of municipal sludge:

- * the disposal of dry sludge in landfills regulated by the New Mexico Environmental Improvement Board Solid Waste Management Regulations (20 NMAC 9.1);
- * land application including the injection of liquid sludge into subsurface soil, covered by the New Mexico Water Quality Control Commission Regulations (20 NMAC 6.2) and 40 CFR 503, Subpart B; and
- * surface disposal within an approved disposal unit, covered by 40 CFR 503, Subpart C and the New Mexico Water Quality Control Commission Regulations (20 NMAC 6.2).

PROCESS FOR PRIORITY RANKING OF WASTEWATER CONSTRUCTION LOANS PROJECTS AND MANAGEMENT OF THE PRIORITY LIST

The federal Clean Water Act as amended in 1987 authorized the U.S. Environmental Protection Agency (EPA) to make capitalization grants to the states to establish revolving loan funds, to which the states must make 20% matching contributions. The revolving fund provides loans for the construction of wastewater treatment facilities to prevent or abate water pollution in eligible communities. Any municipality, county, sanitation district, authorized Indian tribal organization, other public body created under state law which has jurisdiction over the disposal of domestic sewage, industrial wastes, or other waste may apply for loan assistance under the Act provided they qualify for such funding. The New Mexico Environment Department (NMED) administers the loan program under 20 NMAC 7.5 to 7.7 and the New Mexico Water Quality Act Sections 74-6A-1 to 74-6A-15 NMSA 1978.

As part of its administration of the wastewater construction loans program, NMED has devised the priority system used to rank projects eligible for funding. The priority system is set forth in the document: **Water Quality Control Commission Priority Rating System for Wastewater Facility Construction Loan Fund Projects** (Reference 5). NMED reviews the priority system annually and proposes any amendments deemed necessary for effective program implementation. The system as amended and the priority list are brought to public hearing. The final decision by the Water Quality Control Commission on any revisions to the priority system are based on the hearing. The amended system must then be approved by the U.S. Environmental Protection Agency.

DOCUMENTS INCORPORATED BY REFERENCE

- (1) New Mexico Water Quality Control Commission. 1995. State of New Mexico Standards for Interstate and Intrastate Streams. As amended through January 23, 1995. Santa Fe. 51 p.
- (2) Environmental Protection Agency, Region 6. 1995. Implementation Guidance for State of New Mexico Standards for Interstate and Intrastate Streams. Dallas, TX. 15 p.
- (3) New Mexico Environment Department. 1996. The Process for Developing Total Maximum Daily Loads for Point Source Wasteload Allocations and Nonpoint Source Load Allocations With the Methodology for Stream Reach Ranking in the State of New Mexico, pages 1-14. Santa Fe.
- (4) New Mexico Environment Department. 1998. State of New Mexico Procedures for Assessing Standards Attainment for Section 303(d) List and Section 305(b) Report, Assessment Protocol. Santa Fe. 18 p.
- (5) New Mexico Water Quality Control Commission. 1986. Water Quality Control Commission Priority Rating System for Wastewater Facility Construction Loan Protects. Santa Fe. 4 p.

State of New Mexico

Continuing Planning Process

(CPP)

As explained on page 11 of the CPP adopted by the NM Water Quality Control Commission on July 23, 1998, documents incorporated by reference may later be revised after public notification and public participation appropriate to each document. Such revised documents are to be considered incorporated in the CPP by reference.

Record of revision of references:

Reference	Date of Revision
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Revised references have been inserted into this binder.